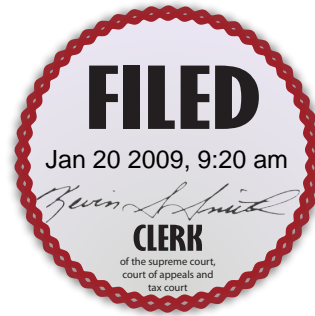


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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LISA GAGNIER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0806-CR-00353
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0406-FC-00071

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**January 20, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Lisa Gagnier appeals the three-year sentence that was imposed following her guilty plea to Theft,<sup>1</sup> a class D felony. Specifically, Gagnier contends that her sentence must be set aside because the trial court failed to identify her sobriety and substance abuse problems as mitigating factors.<sup>2</sup> Concluding that Gagnier was properly sentenced, we affirm the judgment of the trial court.

### FACTS

On May 28, 2004, Gagnier stole merchandise valued at approximately \$785 from a Meijer Department Store in Highland. As a result, the State charged Gagnier with forgery and theft. Although a warrant was issued for Gagnier's arrest, no further activity occurred for approximately three years. Thereafter, on June 7, 2007, the State filed an amended information, charging Gagnier with an additional count of identity deception, a class D felony.

Following a conviction for theft in Illinois, Gagnier agreed to return to Indiana and face the above charges. Thereafter, Gagnier entered into a plea agreement with the State, which called for her to plead guilty to theft in exchange for the dismissal of the remaining charges. The plea agreement provided that sentencing would be left to the trial court's discretion.

At the sentencing hearing on May 13, 2008, the trial court identified Gagnier's

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<sup>1</sup> Ind. Code § 35-43-4-2.

<sup>2</sup> Gagnier has made no independent claim under Indiana Appellate Rule 7(B) that her sentence was inappropriate in light of the nature of the offense and her character.

criminal history, which consisted of six felony and five misdemeanor convictions, and the fact that she was on probation when she committed the offense, as aggravating circumstances. The trial court also determined that Gagnier's decision to plead guilty was a mitigating factor and found that the aggravating circumstances outweighed the sole mitigating factor. As a result, Gagnier was sentenced to three years<sup>3</sup> to be served in the Lake County Sheriff's Work Release Program. She now appeals.

### DISCUSSION AND DECISION

Gagnier claims that her sentence must be set aside because the trial court failed to identify various mitigating circumstances that were apparent from the record. Specifically, Gagnier maintains that the trial court should have found that her recent period of sobriety and her substance abuse problems were mitigating factors.

In resolving this issue, we initially observe that Gagnier was alleged to have committed the offenses before the new advisory sentencing scheme became effective on April 25, 2005. Thus, we analyze Gagnier's claims under the presumptive sentencing scheme. Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007).

In general, sentencing decisions rest within the sound discretion of the trial court and we will reverse the trial court's decision only upon a showing of a manifest abuse of that

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<sup>3</sup> When Gagnier committed the offense in 2004, Indiana Code section 35-50-2-7 provided in relevant part that "[a] person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2 ) years, with not more than one and one-half (1 1/2 ) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances."

discretion. Ingle v. State, 766 N.E.2d 392, 395 (Ind. Ct. App. 2002). It is within the trial court's discretion to increase or decrease a presumptive sentence because of aggravating or mitigating circumstances. Id. When a trial court finds aggravating or mitigating circumstances, it must set forth all significant factors, state the specific reasons why the circumstance is considered aggravating or mitigating, and articulate the court's evaluation and balancing of the circumstances. Id. Only one aggravator is necessary to support an enhanced sentence. Id. at 396.

We further note that the finding of mitigating factors is not mandatory and rests within the discretion of the trial court. Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). Moreover, the court is not required to give the same weight to proffered mitigating factors as the defendant does. Id. Further, the trial court is not obligated to explain why it did not find a mitigating factor to be significant. Anglemyer v. State, 868 N.E.2d 482, 493 (Ind. 2007). However, the trial court may not ignore mitigating facts in the record, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer, 868 N.E.2d at 493.

In this case, the trial court sentenced Gagnier to the maximum term of incarceration of

three years. I.C. § 35-50-2-7. Although Gagnier maintains that a reduced sentence was warranted because of her substance abuse and addiction issues, the record demonstrates that she abused drugs and alcohol for seven years prior to committing the instant offense. Gagnier admitted that she spent nearly \$400 on cocaine per week and \$100 per day on heroin. PSI at 11. During that period, Gagnier had been convicted of check fraud, escape, possession of a controlled substance, and three separate instances of conversion. Id. at 3-5. Moreover, Gagnier was charged in three other cases in which warrants were issued and active. Id. at 4-6.

Even though Gagnier knew that she had a serious substance abuse problem, she never sought voluntary treatment for her addictions. Instead, Gagnier delayed treatment until she was incarcerated in Illinois for offenses that she had committed after committing the instant offense. In light of these circumstances, the trial court was not required to consider Gagnier's substance abuse as a mitigating factor. Indeed, the trial court could have identified Gagnier's substance abuse history an aggravating circumstance. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (holding that the trial court did not err in determining that the defendant's substance abuse history was an aggravating factor when the evidence demonstrated that the defendant was aware of his problem but had taken no positive steps to treat his addiction).

Similarly, the trial court did not err in refusing to consider Gagnier's alleged recent sobriety and crime-free life to be mitigating. Although Gagnier claims to have abstained from the use of alcohol and narcotics since March 2005, the record does not clearly support

that assertion. Instead, after reviewing Gagnier's criminal history and the statements that she made in the presentence investigation report, the record suggests that Gagnier has been sober and law abiding since the end of December 2005. PSI at 7, 11. However, Gagnier has not had much of an opportunity to maintain a drug-free life, as she has been either incarcerated or on probation since that time.<sup>4</sup> Moreover, Gagnier is seeking to have her sentence mitigated for conduct that was required of her after being sentenced for the crimes she committed after the instant offense. Tr. p. 10, 16, 18; Appellant's App. p. 24. In light of these circumstances, we cannot say that the trial court abused its discretion in determining that Gagnier's recent sobriety and law-abiding life did not merit mitigating consideration.

Finally, we note that Gagnier's criminal history alone justified the imposition of her enhanced sentence. As set forth above, Gagnier accumulated six felony convictions and five misdemeanor convictions between 1999 and 2005. PSI at 3-8, 11. The trial court could certainly afford significant aggravating weight to Gagnier's criminal history because those offenses were similar in nature and close in proximity in time to the instant offense. See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999) (observing that the significance of a defendant's criminal history varies based on the gravity and nature and number of prior offenses as they relate to the current offense). Moreover, further aggravation was warranted because Gagnier was on probation when she committed the instant offense. Ind. Code § 35-

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<sup>4</sup> In September 2005, Gagnier was sentenced to concurrent two-year sentences for each of two forgery convictions that occurred in June 2005. PSI at 7. In May 2006, Gagnier was sentenced to two and one-half years probation for a theft conviction in December 2005. Gagnier was not due to be discharged from that probation until November 2008. Id. at 8.

38-1-7.1.

In sum, we conclude that the trial court did not abuse its discretion in refusing to afford mitigating weight to Gagnier's substance abuse issues or to the fact that she obeyed the criminal laws and remained sober for a period of time while she was incarcerated or on probation. Moreover, Gagnier's extensive criminal history, coupled with the fact that she was on probation when she committed the instant offense, justified the imposition of the three-year sentence in this case. As a result, we conclude that Gagnier was properly sentenced.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.